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E. Glenn Rippie
Acting Associate General Counsel
COMMONWEALTH EDISON COMPANY
125 South Clark Street
Chicago, Illinois 60603
(312) 394-4200

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I. INTRODUCTION.

In its initial brief, Commonwealth Edison Company (“ComEd”) explained why Staffs proposed forms and instructions (the “instructions”) should be adopted with the amendment to paragraph 3(c) set forth in the rebuttal testimony of Staff witness Robert Bishop (Bishop, Staff Ex. 3, Schedule E), and an amendment to paragraph F(b). ComEd also explained why the amendments sought by NewEnergy Midwest, L.L.C. (“NewEnergy”) should not be made. In responding to the briefs filed by other parties and in the interest of brevity, ComEd will not reiterate the arguments it previously made, or respond to each of the arguments made by the other parties. Instead this reply is limited to (i) briefly rebutting certain arguments on the scope of the NFF’s authority; (ii) explaining that Staff misinterpreted isolated cross-examination answers from two ComEd witnesses and there is in fact no dispute between Staff and ComEd in how to read the proposed instructions; (iii) pointing out additional flaws in arguments offered by NewEnergy; and (iv) explaining why the Illinois Industrial Energy Consumers’ newly proposed addition to Staffs revised draft forms and instructions, relating to the use of contract rates in calculating transition charges, should be rejected.

II. ALTHOUGH THE ROLE OF THE NFF IS LIMITED UNDER THE ACT, HE NEVERTHELESS IS ENTITLED TO EXERCISE SOME DISCRETION.

The market values used in both the calculation of transition charges and power purchase option prices may be established in one of two ways:

(1) the market value may be determined pursuant to a tariff that has been approved by the Commission and that incorporates an exchange traded or other market traded index, options or futures contract or other contracts applicable to the market for electric power and energy; or

(2) if no such tariff has been placed in effect, the market value may be determined through the “neutral fact-finder” process provided for in Section 16-112 of the Public Utilities Act (the “Act”). (220 ILCS 5/16-112(a)).

Under the neutral fact-finder method, the neutral fact-finder (“NFF”) is to calculate separate market values for individual utilities or a single set of values to be used by all utilities in the state, using summaries of data drawn from actual contracts entered into by the utilities and these other suppliers that are required to submit summaries of such contracts. (220 ILCS 5/16-112(b), (d)). The Act is clear both as to the NFF’s duties and as to the information upon which he may rely in performing those duties – he must calculate market values in accordance with § 16-112 based on factual, relatively objective, auditable information of the type stated in the Act. There simply is no authority for the NFF to engage in a hybrid process of the sort proposed by NICOR and Illinois Power. (See NICOR Br. at 2-6; IP Br. at 1-3). Nor is there any authority which would require or permit the NFF to make the “load following/load shaping” or “anticipated future profits” adjustments proposed by NewEnergy. (NewEnergy Br. at 11-16). Making these adjustments would be unlawful. Nor does the Commission have the authority to “direct” the NFF, or require the utilities to submit additional data not provided for in the Act to the NFF as these parties suggest. (NewEnergy Br. at 9-10, 14, 19). The Commission’s authority to adopt forms and instructions governing the contract summaries simply does not extend to changing the data to be reported. (See 220 ILCS 5/16-112(c)). To the extent the parties are discontented with the NFF process, they are free to pursue development of an alternative in the appropriate forum, but it is improper to attempt to modify the NFF process under the guise of amendments to the instructions for reporting contract data.

Despite the limited role of the NFF, the Act does not leave him entirely without discretion in considering the information reported to him under the Act as suggested by IIEC and Ameren. (IIEC Br. at 3-5; Ameren Br. at 7). For example, under § 16-112(e), the NFF can weight contract prices, or disregard certain contracts in making his determination, assuming the rationale for such decision is clearly explained and bears scrutiny. This is why the Staff instructions appropriately call for the submission of additional information related to a contract that must be reported. Whether a contract is an economic development or cogeneration deferral contract, when it was entered into, or whether there was additional consideration given for entry into the contract other than the agreement to pay a stated price, are all relevant facts that bear on whether and how the contract relates to the determination of a market value for power and energy. Information relating to the expected loads to be served may likewise be relevant to understanding the contract price. This is relatively objective, auditable information that relates to the specific contract.

The NFF's discretion is not unlimited. It is, for example not his role to independently determine some "market value" with reference to data other than that the parties are required by the Act to report. This is why it would be highly inappropriate to require, as NewEnergy suggests, that subjective opinion information be reported to the NFF. Such information is not objective or auditable, and there is no authority in the Act for the NFF to rely on it.

HI. COMED AND THE STAFF DO NOT DISAGREE ON HOW THE INSTRUCTIONS PROPOSED BY STAFF SHOULD BE INTERPRETED.

At page 17 of its brief, Staff states that:

“Staff reads [t]his instruction [Staff Ex. 1 at 6, Schedule B] as requiring a reporting entity to show whatever assumptions it has made in unbundling the contract prices, including sample calculations, such that the NFF can understand the assumptions and calculations,” (Staff Br. at 17).

ComEd agrees with this interpretation of Staff’s proposed guideline. Unfortunately, it appears that Staff, based on two less than clear cross examination questions and answers, believes ComEd has rejected Staff’s interpretation and/or opposes the instruction, This is incorrect.

In his direct testimony, ComEd witness Geraghty testified that Staffs initial instructions did not address the deduction of delivery service charges where the delivery charges included demand charges. In response thereto, Robert Bishop on behalf of the Staff proposed certain modifications as set forth in Schedule E to his rebuttal testimony. (Bishop, Staff Ex. 3.0 at 3, Schedule E). ComEd in its initial brief stated that the proposed modifications addressed the issue it had raised and urged their adoption. (ComEd Br. at 2).

In its initial brief, however, Staff stated a concern regarding one of Mr. Geraghty’s answers. Staff erroneously interpreted Mr. Geraghty’s answer to an ambiguous cross examination question, and concluded that it “appears from this that ComEd believes it can structure its report of required information by massaging reported numbers to reflect its view of an appropriate ‘allocation’ of charges” (Staff Br. at 16). A review of Mr. Geraghty’s direct and cross

examination testimony make clear the error in Staffs interpretation. As is confirmed by this brief, ComEd does not have this belief and in fact does not disagree with Staffs interpretation.

On direct, Mr. Geraghty addressed the issue of how to report a contract when the contract had both demand and energy charges, and delivery service charges based on demand, He specifically discussed the allocation of the contract demand charges and proposed that the demand charges be converted to a per kilowatthour basis and then allocated evenly over the on-peak hours. (Geraghty, ComEd Ex. 1 at 4-5). Not a single party objected to this allocation methodology for contract demand charges in their rebuttal or in their briefs. He also proposed that in this circumstance the delivery service charges be calculated by taking the total RCDS revenues divided by the total on-peak kWh of usage and subtracting the resulting kWh charge from the contract revenues for on-peak hours. Mr. Bishop's proposed amendment, set forth in schedule E of his rebuttal, specifically responded to this proposal.

Mr. Geraghty's cross examination answers are consistent with the foregoing. On cross, Mr. Geraghty was first referred to his direct testimony (which assumes all demand charges were allocated to on-peak energy usage):

"Q. Concerning pages 3 and 4 of your direct, I wanted to ask you a hypothetical with that." (Tr. at 60).

The hypothetical that followed was unclear. Mr. Geraghty responded by trying to set the record straight that the delivery service charges must be subtracted from the appropriate pricing period applicable to the charge:

“A. The testimony that I provided [in direct testimony] was structured so that you would be looking at the bundled contract with charges properly allocated to the on-peak and off-peak periods, So that subtracting the delivery service charges that are being allocated to the on-peak periods [because the hypothetical contract in direct assumes all demand charges were allocated to on-peak energy usage] would properly allocate the energy charges to both on-peak and off-peak periods,” (Tr. at 61).

Here Mr. Geraghty was simply attempting to restate his direct testimony, which Staff agreed with and responded to by proposing the revision in Schedule E to Staffs Exhibit 3.0. It is unfortunate that the cross examination question was vague. Taken in the overall context of Mr. Geraghty’s testimony, it is clear that Mr. Geraghty was not suggesting that anyone could “massage” the reported numbers and ignore the proposed instructions. Instead he was describing how to report the costs associated with a certain type of contract in the time period to which they belong.

Similarly, Staff has misconstrued the cross examination testimony of Mr. Feerick. Staff’s instructions have from the beginning allowed the reporting of additional information related to the contracts that will contribute to the NFF’s ability to more fully understand the terms of the reported contract “and make the required determinations and that will enable the NFF to do so with greater detail, precision and differentiation,” (Bishop, Staff Ex. 1.0, Schedule B, paragraphs B(Z)(d), C(17); Bishop, Staff Ex. 3.0, Schedule D). ComEd agrees that such information, if it is relatively objective and auditable, should be reported. This does not mean, however, that ComEd “believes” that a reporting entity is given the discretion, under Staffs draft instructions, to not report actual contract prices, It is required to do so. Mr. Feerick’s response specifically referred to the “additional information” section of the instructions. The reference to

“additional information” was understood by other parties to be just that, information in addition to the actual contract price. (See NICOR Br. at 7).

ComEd has consistently supported the draft instructions, and has complied with similar instructions over the last two years. It is unfair for Staff to leap to the conclusion based on two isolated cross examination answers, that ComEd “apparently believes” it can ignore those forms, and then ask for a Commission instruction disallowing the “apparent reading” Staff has created. (Staff Br. at 15, 17 -18). Since ComEd agrees with Staffs interpretation of its instructions, it is not necessary to address the matter further in the Commission’s order. Should the Commission decide to do so, however, the language of the order should be limited to the following:

Based on the reading of the cross examination of two ComEd witnesses, Staff raised the question as to how ComEd interpreted Staffs instructions. ComEd responded that on this issue it had no disagreement with Staffs interpretation on how contracts were to be reported.

IV. NEWENERGY’S EFFORTS TO MANIPULATE THE NFF PROCESS SHOULD BE FIRMLY REJECTED.

As explained in ComEd’s initial brief, NewEnergy’s request to have the NFF calculate separate “retail” and “wholesale” market values and its effort to have the instructions modified to require the reporting of subjective opinions on “true” or “retail” market values should be rejected. In its Initial Brief NewEnergy stated “[u]nquestionably, the recommendations by NewEnergy are more likely to result in consistent, practical, and accurate calculations of the market price for power and energy in Illinois.” (NewEnergy Br. at 18). This statement ignores

the fact that most parties questioned and rejected NewEnergy's recommendations. (See Crumrine, ComEd Ex. 3 at 3-6; Hastings, IP Ex. 1.3 at 2-4; IP Br. at 4; Staff Br. at 10-11). As the record shows, NewEnergy's recommendations will not lead to increased accuracy and are highly likely to further distort, rather than improve, the NFF process.

NewEnergy's arguments all rest on the assumption that there are separate "retail" and "wholesale" markets with fundamentally incompatible products, (See O'Connor, NewEnergy Ex. 1 at 3). This assumption was rejected by a number of witnesses. (see, e.g. Crumrine, ComEd Ex. 3 at 3-6; Hastings, IP Ex. 1.3 at 2-4; Staff Br. at 10-11). The designation of a sale as wholesale or retail does not by itself influence price or determine load shape. (Crumrine, ComEd. Ex. 3 at 3-5). Nor is this assumption consistent with NewEnergy's own business. As NewEnergy advertises on its website, it has its own trading floor in Boston, and it buys from and sells to a diversified range of suppliers in order to keep costs low. (Tr. at 163-165). Far from being unable to compete in serving retail customers under the existing law, NewEnergy exceeded its own business projections when the market opened. (Tr. at 165-166). It is also worth noting that while NewEnergy argues that separate "retail prices" should be calculated by the NFF, it also argues that those prices cannot be derived from the actual retail contracts that will be reported. (O'Connor, NewEnergy Ex. 1 at 13). Instead, NewEnergy "assumes" that those prices will be too low, and urges that the NFF be required to rely instead on subjective opinions submitted by self-interested reporting entities as to the "true" market value. (O'Connor, NewEnergy Ex. 1 at

3, 13, 14-15, Attachment B). Modification of the reporting process based on such speculative assumptions will not result in a fair, or legal, process.’

The unreliable nature of NewEnergy’s arguments is further demonstrated by its efforts to distort the testimony of other witnesses to make it appear as though other parties agree with its assertions. For example, at page 11 of its brief, NewEnergy alleges that “By definition, wholesale contracts do not contain all of the costs of selling electric power and energy at retail. Although Edison initially questioned whether there was such a difference, Edison eventually agreed that these [wholesale and retail] are separate markets. (See Tr. at 75. See *also* Edison witness Feerick Direct Testimony at 3, 5.)” (NewEnergy Br. at 11). A look at those citations, however, proves exactly the opposite. A review of the transcript itself puts Mr. Crumrine’s testimony properly in context — a discussion about contracts, not markets:

“Q. Are there any differences between wholesale *contracts* and retail *contracts*?

A. There can be many differences” (Tr. at 75; emphasis added.).

That is hardly an admission that there are distinct and separate retail and wholesale markets. In fact, Mr. Crumrine specifically refuted this assumption, (Crumrine, ComEd Ex. 3 at 3-4). The citation to Mr. Feerick’s testimony ignores corrections marked on the record. (Tr. at 68-69).

¹ NewEnergy cites in its brief to a purported analysis designed to “illustrate” Dr. O’Connor’s views on “retail” market value. (NewEnergy Br. at 7, 15). This analysis was based entirely on several “assumptions” for which no foundation was given, and was also presented in such a way that no party was given an adequate opportunity to review and respond to it. Thus, it too is fundamentally unreliable and should be disregarded. (Tr. at 163-179).

NewEnergy goes on at page 12 of its brief to state that “Edison witness Crumrine admitted that there presently is no recognition of the costs associated with load following. (See Tr. at 83).” (NewEnergy Br. at 12). Once again, a review of the transcript discloses the distortion, Mr. Crumrine disagreed that there were any costs related to “load following” as defined by NewEnergy. His testimony, read in context, simply states that the imaginary costs that the questioner was assuming did not exist and consequently were not and should not be captured in the determination of market value:

“Q. Is it your understanding that the Zuraski Peaking Adjustment is the same as accounting for load following services?

* * * *

THE WITNESS: A. Given your definition of load following, my answer is no.

MR. TOWNSEND: Q. Should the costs associated with load following be included at some point in the determination of the market value?

A. As you have defined load following, no.” (Tr. at 82 – 84).

NewEnergy ignores the fact that Mr. Crumrine went on to explain that the costs with which Dr O’Connor was concerned with were in fact captured in the translation tariff:

Q. What adjustments are included in Edison’s translation tariff?

A. Edison’s translation tariff takes into account the concept that Doctor O’Connor lays out in his testimony that presumes that a supplier supplying a retail customer whose load shape is different from hour to hour, higher load during business hours, for example, for an office building, that the supplier cannot just buy a single flat load block to supply that power, to supply that load shape; that there is a change in the load requirements during the course of the day. (Tr. at 84-85).

* * * *

[REDIRECT EXAMINATION BY MS. BEAD:]

Q. Mr. Crnmrine, do you remember when you were trying to explain how the translation tariff takes into account the concerns raised by Doctor O'Connor in his testimony?

A. Yes, I do.

Q. Could you please complete that explanation?

A. As I understand it, Doctor O'Connor is making points with regard to the price of a load shape. And the costs associated with serving that load shape compare to a flat block purchase in the marketplace. He observed that at times there are times where a customer with that type of load shape would be using less than the amount that would be assumed for a flat amount transaction, and at other times he would be using more because his presumption is, by the very nature of their load, that it varies during the course of the day. He is, as I understand it, suggesting that the effect of using less power at the times of lower prices and more power at the times of higher prices should be reflected into an adjustment for load shape.

It's my testimony that the so-called **Zuraski** Adjustment does exactly that. It is in our translation tariff, It does not average peaks. It actually takes hourly load shapes and prices and weights them by megawatts of load. So that we properly weight average the load shape as suggested, as recommended by Doctor O'Connor, and that adjustment is already contained in **ComEd's** translation tariff (Tr. at 96-97).

NewEnergy's proposal further should be questioned in light of its assertion that:

The Commission need not be concerned that the NFF will become confused. The key should be for the NFF to explain **fully** how it is relying upon the information. The Commission should keep in mind that it will have another opportunity to rectify obvious problems in the utilities' § 16-112(k) translation tariff proceedings. (**NewEnergy** Br. at 17).

Section 16-112(k) provides that the market value will be determined for each customer class by applying the market values determined by the NFF, "taking into account the daily, monthly, annual and other relevant characteristics of the customers' demands on the electric utility's system." Section 16-112 does not permit the Commission to simply change the market values

V. THE IIEC’S PROPOSED INSTRUCTION REGARDING THE CONTRACT RATE TO BE USED IN CALCULATING THE TRANSITION CHARGE SHOULD BE REJECTED.

ComEd agrees with IIEC that the NFF should ~~take~~ care to ensure that transition charges are properly calculated in the unbundling calculations required by Section 16-112(c), but disagrees with the revision to the instructions proposed by IIEC in its Initial Brief at pp. 7-8. The instruction would state a general rule relating to when contract rates are to be used in calculating transition charges. On its face, the proposed instruction ignores the actual language of Section 16-102 of the Act, which states that contract rates are to be used only “to the extent applicable.” (220 ILCS 5/16-102, subsection (l)(ii) in the definition of “Transition Charges”). There are many reasons a contract rate might not be applicable. The Commission should be cautious about adopting broad interpretations of the law, under the guise of setting instructions for the NFF process, which then could be cited by parties in specific factual disputes not now before the Commission. This is particularly true when the proposed instruction is offered for the first time in a brief, and other parties were denied the opportunity to present rebuttal testimony on the issue. For these reasons, IIEC’s proposed amendment should be rejected.

* * *

VI. CONCLUSION.

WHEREFORE, COMMONWEALTH EDISON COMPANY requests that the Commission enter an order approving the draft forms and instructions proposed by Staff with the amendment to paragraph 3(c) set forth in the rebuttal testimony of Staff witness Robert Bishop (Bishop, Staff Ex. 3, Schedule E), and an amendment to paragraph F(b) to make that paragraph consistent with either the language offered in ComEd's Initial Brief (ComEd Br. at 2-3) or with the prior order of the Commission in 111. C.C. Dkt. 98-0769 (Order, 111. C.C. Dkt. 98-0769 at 15-16, Appendix B, par. 12; see also Staff Br. at 9-10; Stephens, IIEC Ex. 1 at 10).

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: *Mitchel A. Mick*

Sarah J. Read
Lisa A. Hausten
Mitchel A. Mick
SIDLEY & AUSTIN
10 South Dearborn Street
Chicago, Illinois 60603
(312)853-7000

E. Glenn Rippie
Acting Associate General Counsel
COMMONWEALTH EDISON COMPANY
125 South Clark Street
Chicago, Illinois 60603
(312)394-4200

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	No. 00-0007
Requirements governing the form and)	
content of contract summaries for the)	
neutral fact-finder process for 2000)	
under Section 16-112(c) of the)	
Public Utilities Act.)	

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on this date we have forwarded for filing with the Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, the original and eleven copies of the Reply Brief of Commonwealth Edison Company in the above-captioned matter.

COMMONWEALTH EDISON COMPANY

By: *Mitch A. Mick*
One of its Attorneys

March 23, 2000

Sarah J. Read
Lisa A. Hausten
Mitchel A. Mick
SIDLEY & AUSTIN
10 South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

E. Glenn Rippie
Acting Associate General Counsel
COMMONWEALTH EDISON COMPANY
125 South Clark Street
Chicago, Illinois 60603
(312) 394-4200

CERTIFICATE OF SERVICE

I, Mitchel A. Mick, certify that I served copies of the attached Notice of Filing and the Reply Brief of Commonwealth Edison Company, on each party on the attached service list by either facsimile, messenger, Federal Express or by depositing a copy in a properly addressed, sealed envelope with the U.S. Post Office, Chicago, Illinois, with proper postage prepaid on March 23, 2000.



Mitchel A. Mick

SERVICE LIST
I.C.C. DKT. NO. 00-0007

Donna M. Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

John Albers
Hearing Examiner
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Steven Revethis
John Feeley
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601

Robert Bishop
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Christopher W. Flynn
Karl B. Anderson
Jones Day Reavis & Pogue
77 West Wacker Drive
Chicago, IL 60601

Patrick Foster
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Robert Mill
AmerenCIPS
607 East Adams Street
Springfield, IL 62739

Leijuana Doss
Marie Spicuzza
Assistant State's Attorneys
Environment and Energy Division
69 West Washington, Suite 700
Chicago, IL 60602

Robert Jared, Esq.
MidAmerican Energy Company
106 East Second Street
Davenport, IA 52808

Edward J. Griffin
W. Michael Seidel
Defrees & Fiske
200 South Michigan Avenue
Suite 1100
Chicago, IL 60604

James Hinchliff
Gerard Fox
Mary Klyasheff
Peoples Energy Services Corporation
130 East Randolph Street, 23rd Floor
Chicago, IL 60601

Edward C. Fitzhenry
Lueders Robertson & Konzen
1939 Delmar Avenue
Granite City, IL 62040

Susan M. Landwehr
Enron Energy Services, Inc.
900 Second Avenue South
Suite 890
Minneapolis, MN 55402

Christopher Townsend
David Fein
Piper **Marbury** Rudnick & Wolfe
203 North **LaSalle** Street
Suite 1800
Chicago, IL 60601

Stephen Mattson
Joseph Weber
Mayor, Brown & Platt
190 South **LaSalle** Street
Chicago, IL 60603

James Stamos
Stamos & Trucco
10 North Dearborn
5th Floor
Chicago, IL 60602

Kent M. **Ragsdale**
Alliant Energy Corporation
200 First Street, SE., 12th Floor
Cedar Rapids, IA 52401-0351

Joseph L. Lakshmanan
Regulatory Services
Illinois Power Company
500 South 27th Street
Decatur, IL 62521

Michael A. Munson
150 North Michigan Avenue
Suite 1405
Chicago, IL 60601

Sarah J. Read
Mitchel A. Mick
Sidley & Austin
10 South Dearborn
Suite 5400
Chicago, IL 60603

Julie Voeck
Blackhawk Energy Services
N16 W23217 Stone Ridge Drive
Suite 100
Waukesha, WI 53168

E. Glenn **Rippie**
Commonwealth Edison Company
125 South Clark Street
Suite 1535
Chicago, IL 60603

Nicholas T. Shea
Central Illinois Light Co.
300 Liberty Street
Peoria, IL 61602

Koby Bailey
Nicor, Inc.
1844 Ferry Road
Naperville, IL 60563

Michael W. Hastings
P.O. Box 3787
Springfield, IL 62708-3787

Joseph H. **Raybuck**
Ameren Services Company
1901 Chouteau Avenue
St. Louis, MO 63103-3085

Kathy Lipp
Alliant Energy
222 West Washington Avenue
P.O. Box 192
Madison, WI 53701-0192

Eric Bramlet
Koger & Bramlet, P.C
316 ½ Market Street
P.O. Box 278
Mt. Cannel. IL 62863

Alan H. Neff
Ronald D. Jolly
Assistants Corporation Counsel
City of Chicago Department of Law
Suite 900
30 North LaSalle Street
Chicago, IL 60602-2580

Phillip R. O'Connor
Tom Bramschreiber
Ken Walsh
NewEnergy Midwest, L.L.C.
29 South LaSalle Street
Suite 900
Chicago, IL 60603

Steven Walter
City of Chicago Department of Environment
Suite 2500
30 North LaSalle Street
Chicago, IL 60602-2580